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SUBJECT: ICTY/ICTR PRESIDENTS, PROSECUTORS BRIEF SECURITY COUNCIL

REF: A. STATE 92037

[1](#)B. 2005 USUN 2911

[1](#)1. BEGIN SUMMARY: The Presidents of and Prosecutors for the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) briefed the Security Council June 7 on their progress toward implementation of the Completion Strategy of the respective tribunals. All Council members spoke, after which Serbia and Rwanda intervened. Note: Serbia participated for the first time as the continuation of Serbia and Montenegro. Montenegro is now seeking UN membership.

[1](#)2. Common themes included a call for states to transfer Ratko Mladic, Radovan Karadic, and Felicien Kabuga to the tribunals, as well as support for referrals to local courts, consistent with appropriate safeguards, measures to enhance the tribunals' efficiency, and efforts to help develop local judicial institutions. In its intervention, Serbia defended its cooperation with the ICTY and called on the ICTY to refer cases to Serbian courts. Rwanda stressed four priority areas for the ICTR, including the need to transfer cases and those convicted to Rwanda to serve their sentences. The briefings by the Presidents and Prosecutors and the individual country statements, as available, have been sent electronically to S/WCI, Embassy-The Hague, and L/AN. END SUMMARY.

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Presidents' and Prosecutors' Briefings  
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[1](#)3. In their remarks, ICTY President Fausto Pocar and ICTR President Erik Mose highlighted issues including their respective tribunal's judicial activities, efforts to implement each tribunal's Completion Strategy, and referral of cases to competent national jurisdictions. Pocar said the ICTY's trials would continue into 2009. Finishing by then might be possible, he said, provided the trials of multiple defendants run smoothly, cases referred -to the former Yugoslavia are not referred back to the ICTY, indictments become more focused, and Mladic, Karadic, and the four other remaining high-level fugitives are transferred to the ICTY soon. In his briefing on the ICTR, Mose expressed confidence that the tribunal could conclude the cases of all indictees currently in detention by 2008, but called the arrest of fugitives and referral of cases to national jurisdictions remaining challenges.

¶4. Pocar also summarized developments following the deaths of Milan Babic and Slobodan Milosevic since his March 31 videoconference, on that subject, with the Council. The ICTY has established a Working Group to follow up on the recommendations of the general audit report of the United Nations Detention Unit (UNDU), conducted by Swedish authorities, and the ICTY's internal inquiry into Milosevic's death, he reported. Pocar also announced that the Dutch authorities concluded their investigation into Babic's death, finding no evidence of criminal conduct.

¶5. ICTY Prosecutor Carla Del Ponte and ICTR Prosecutor Hassan Jallow also reviewed accomplishments and highlighted remaining challenges, particularly in securing cooperation leading to the transfer of indicted fugitives. Of the two, Del Ponte delivered the more pointed statement. After discussing her efforts to increase the tribunal's efficiency, Del Ponte criticized the ICTY's new rule permitting a trial chamber to direct the Prosecutor to reduce the counts in an indictment. The rule could be interpreted only as "advisory in nature," she said, calling the Security Council the only body with authority to modify the ICTY statute and citing the statute's guarantees of prosecutorial independence. Reducing one or several counts may "seriously undermine" the prosecution's case, she argued, eventually leading to impunity for certain crimes. She cited Srebrenica to illustrate her concerns, asking how she could justify presenting "only half of the picture of the brutal crimes" that occurred.

¶6. Del Ponte also stressed the need to secure the arrest and transfer of Karadic and Mladic, expressing particular frustration with Serbia's cooperation with the ICTY concerning Mladic. She also complained of a lack of movement

on transferring Vlastimir Djordjevic and "long and unexplained delays" in the transfer of Dragan Zelenovic. Those delays call into question the Russian Federation's cooperation with the ICTY, she said. In concluding, Del Ponte suggested that the Council should give the prosecutor's office the power to arrest indictees, because states have proven unwilling to do so.

¶7. Jallow stressed the tribunal's challenges in securing the transfer of fugitives and referring cases to national courts.

A top priority remains securing the arrest and transfer of Felicien Kabuga, and the Kenyan government's full cooperation in Kabuga's case should be encouraged, he said. The referral of indictees to national courts remains "slow and challenging," he said, calling inadequate judicial capacity a key obstacle to referrals. He urged states to help build the capacity of Rwanda and other states to accept transferred cases.

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Russian Criticism  
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¶8. Russian PermRep Vitaly Churkin devoted most of his intervention to criticizing the ICTY. He questioned the ICTY's response to the deaths of Babic and Milosevic and criticized the ICTY for failing to respond adequately to a list of questions Russia provided concerning those deaths. Churkin called the ICTY's decision not to release Milosevic for treatment in Moscow "a serious error" and said Prosecutor Carla del Ponte's "tactless" statement following Milosevic's death had "shocked" the Russian public.

¶9. Churkin then rejected the ICTY President and Prosecutor's negative assessment of Russia's cooperation with the tribunal. The whereabouts of Vlastimir Djordjevic are not confirmed, he said, and Zelenovic remains in a pre-detention facility. Finally, Churkin warned against engaging in "policies of legal fantasies" by granting Prosecutor Del Ponte's request for authorization to arrest indictees.

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Serbia Defends its Cooperation  
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¶10. Zoran Loncar, Minister for Public Administration and Local Self-Government of the Republic of Serbia, argued that Serbia "has expressed full readiness and a clear political commitment to successfully complete its cooperation with the ICTY." He commented that most indictees were surrendered to the ICTY at a time marked by "understanding and (an) atmosphere of partnership," which "yields best results." The harboring of Mladic "directly threatens the national and State interest of Serbia," he said, emphasizing that the Serbian government had done "absolutely everything in its power" to find Mladic and transfer him to the ICTY.

¶11. Loncar also called on the ICTY to transfer cases to Serbian courts. He argued that trials before domestic courts would help realize the goals of the ICTY and help prevent perceptions that the trial was biased.

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Rwanda Identifies Areas Needing Progress  
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¶12. Rwandan Charge d'Affaires Nicholas Shalita identified four areas in which progress is essential in the next few months. First, indicted fugitives such as Felicien Kabuga and Augustine Ndirabatsire must be brought to justice at the ICTR. Second, the ICTR should refer trials to Rwanda, which would help "eradicate the culture of impunity and promote reconciliation." The Rwandan government has drafted new legislation to prepare for these transfers, which addresses procedural issues, waives the death penalty, and creates Special Chambers, he reported. Third, the ICTR must transfer all ICTR convicts to serve their sentences in Rwanda. Fourth, the Completion Strategy should incorporate the transfer of all court documents and materials to Rwanda, where they could become the heart of a research and educational center that would help raise awareness and prevent genocide in Rwanda and elsewhere.

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SC Resolution  
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¶13. Many Security Council members expressed support for the draft resolution (ref A) extending the terms of the ICTR judges. The Security Council President indicated that the Council intends to adopt the resolution in the near future.  
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